No.

Office Supreme Court

In the

United States Court of Appeals

For the Seventh Circuit

No. 12094

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

PAUL DE LUCIA,
Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

Honorable
Walter J. La Buy,
Trial Judge.

APPENDIX FOR DEFENDANT-APPELLANT.

(Contempt Proceedings.)

WM. SCOTT STEWART,
77 W. Washington St.,
Chicago 2, Illinois,
Attorney for Defendant-Appellant.

INDEX.

Prefix to Record 1
Placita 2
Motion to compel Answers' to oral Interrogatories, filed Feb. 28, 1957 3
Ex. A—Affidavit of John H. Bickley, Jr. 4
Motion to show cause, filed Apr. 8, 1957 17
Affidavit of John H. Bickley, Jr. 17
Order continuing motion, entered Apr. 8, 1957 19
Order re: reconsideration of ruling, etc., entered Apr. 8, 1957 19
Order re: Memorandum Opinion, etc. entered June 7, 1957 20
Answer of Defendant, filed June 11, 1957 21
Contempt Order, entered June 11, 1957 40
Notice of Appeal, filed June 11, 1957 41
Stipulation re: record 43
Order extending time 44
Clerk's Certificate 44

1 IN THE UNITED STATES DISTRICT COURT,

Northern District, Eastern Division.

United States of America *vs.* Paul DeLucia.	Contempt Honorable Walter J. LaBuy, Trial Judge.

The deposition of Paul DeLucia was filed February 2, 1957. Motion to compel answers to oral interrogatories was filed February 28, 1957. Paul DeLucia was ordered by Judge Walter J. LaBuy on March 3, 1957 to answer oral interrogatories within three days. On April 3, 1957 the United States Attorney made an oral motion for criminal contempt order and ruling was reserved. On the same day the defendant filed his sworn answer and brief in opposition to motion for rule to show cause. On April 8, 1957, plaintiff's motion for rule to show cause was entered and deferred until after trial of cause. On June 7, 1957 plaintiffs motion for rule to show cause why defendant should not be punished for contempt of court was allowed and leave was granted defendant to file answer. Sworn answer was filed by defendant on June 11, 1957. On the same day, June 11, 1957, defendant was adjudged guilty of contempt and was fined $500. Execution was stayed pending appeal. Notice of appeal was filed June 11, 1957. The defendant was not arrested, bail was not taken; nor was property attached.

2 Pleas had at a regular term of the United States District Court for the Eastern Division of the Northern District of Illinois begun and held in the United States Court Rooms in the City of Chicago in the Division and District aforesaid on the first Monday of Monday, being the 3rd day thereof, in the Year of Our Lord One Thousand Nine Hundred Fifty-Seven and of the Independence of the United States of America, the 181st Year.

Present:

Honorable John P. Barnes, Chief District Judge.
Honorable William H. Holly, District Judge.
Honorable Philip L. Sullivan, District Judge.
Honorable Michael L. Igoe, District Judge.
Honorable William J. Campbell, District Judge.
Honorable Walter J. LaBuy, District Judge.
Honorable J. Sam Perry, District Judge.
Honorable Win G. Knoch, District Judge.
Honorable Julius J. Hoffman, District Judge.
Roy H. Johnson, Clerk.
William W. Kipp, Sr., Marshal.

Tuesday, June 11, 1957.

Court met pursuant to adjournment.

Present: Honorable Walter J. LaBuy, Trial Judge.

3 UNITED STATES DISTRICT COURT.
(Caption—56-C-1676)

NOTICE.

(Filed Feb. 28, 1957. Roy H. Johnson, Clerk.)

To: William Scott Stewart, Attorney At Law,
77 W. Washington Street, Chicago, Illinois.

Please Take Notice that on Thursday, February 28, 1957, at 10:00 A. M., or as soon thereafter as counsel may be heard, I will move the Honorable Walter J. LaBuy, Judge of the United States District Court for the Northern District of Illinois, for an order requiring Paul DeLucia also known as Felice DeLucia, defendant in the above entitled case, to answer the oral interrogatories set out in the affidavits of John H. Bickley, Jr., and the certificates of Popkin Simonian, a notary public, attached to the motions as Exhibit A and Exhibit B, respectively, a copy of which is hereunto annexed and made a part hereof.

R. Tieken,
United States Attorney.
Attorney for Plaintiff.

4 UNITED STATES DISTRICT COURT.
(Caption—56-C-1676)

MOTION TO COMPEL PARTY TO ANSWER ORAL INTERROGATORIES ON DEPOSITION.

Plaintiff, United States of America, by R. Tieken, United States Attorney for the Northern District of Illinois, moves the court for an order requiring Paul DeLucia also known as Felice DeLucia, defendant herein, to answer oral interrogatories propounded to the said Paul DeLucia also

known as Felice DeLucia during the course of his examination upon the taking of his deposition before Popkin Simonian, a Notary Public in and for the State of Illinois, County of Cook, at Chicago, Illinois, on the 20th day of February, 1957, which said interrogatories said Paul DeLucia also known as Felice DeLucia refused to answer as more fully appears from the affidavit of John H. Bickley, Jr., Assistant United States Attorney, and the certificate of the notary public, Popkin Simonian, hereto annexed as Exhibits A and B, respectively.

R. Tieken,
United States Attorney,
Attorney for Plaintiff.

5 Exhibit A.

UNITED STATES DISTRICT COURT.
(Caption—56-C-1676)

AFFIDAVIT IN SUPPORT OF MOTION.

State of Illinois, }
County of Cook. } ss.

John H. Bickley, Jr., being first duly sworn, on his oath says:

1. I am an Assistant United States Attorney assigned the prosecution of the above entitled cause on behalf of the United States of America, plaintiff herein.

2. There is pending in the United States District Court for the Northern District of Illinois, a certain action, wherein United States of America is plaintiff and Paul DeLucia also known as Felice DeLucia is defendant.

3. Notice of the taking of the deposition of Paul DeLucia also know nas Felice DeLucia was served upon

his attorney, William Scott Stewart, 77 West Washington Street, Chicago, Illinois, on the 14th day of February, A.D. 1957, by mail, pursuant to the Federal Rules of Civil Procedure, stating that the deposition would be taken on February 20, 1957, at 2:00 P. M., before Patrick J. Sullivan, a Notary Public, in and for the County of Cook and State of Illinois, in Room 450, United States Court House, 219 South Clark Street, Chicago 4, Illinois, a copy of the notice of deposition is attached to this motion and marked Exhibit C,

6 4. The defendant, Paul DeLucia also known as Felice DeLucia, attended, was duly sworn by Popkin Simonian, a Notary Public, and was examined by John H. Bickley, Jr., Assistant United States Attorney, on behalf of the plaintiff, United States of America. During the course of the examination, he asked the defendant Paul DeLucia also known as Felice DeLucia, the following questions, and on the advice of his attorney William Scott Stewart, and also on his own initiative the defendant refused to answer the questions on the basis of the Fifth Amendment to the Constitution of the United States, asserting that to answer the same would tend to incriminate him.

A. Paul DeLucia.

Q. Where do you live, sir?

A. 1515 Bonnie Brae, River Forst.

Q. Mr. DeLucia, on January 9, 1925, did you file with the Clerk of the Circuit Court of Cook County a declaration of intention, No. 162822, to become a citizen of the United States of America under the name of Paul Maglio?

A. I respectfully refuse to answer. I don't want to be witness against myself, and I will declare the privilege of the Fifth Amendment.

Q. And at this time, you honestly believe that if you answered that question, you would tend to incriminate yourself?

A. I refuse to answer.

Mr. Stewart: He refuses to answer that question, too.

Mr. Bickley: Q. Mr. DeLucia, on February 21, 1928, did you cause to be filed with the District Director of Naturalization in the Federal Building, Chicago, Illinois, your preliminary form for petition for naturalization, No. 370-55072, under the name of Paul Maglio?

7 A. I refuse to answer for the same reason.

Q. Do you honestly believe that if you answered that question, it would tend to incriminate you?

A. I refuse to answer for the same reason.

Q. Did you, on April 10, 1928, file with the Clerk of the United States District Court of Chicago, Illinois, your petition for naturalization under the name of Paul Maglio?

A. I refuse to answer for the same reason.

Q. Now, on April 10, Mr. DeLucia, 1928, did you attend a hearing on your petition for naturalization whereat, and while under oath, you declared that you wanted to change your name from Paul Maglio to Paul DeLucia?

A. I refuse to answer for the same reason.

Q. And at that same hearing, did you state under oath that you had never been arrested or convicted of any offense whatsoever?

A. I refuse to answer for the same reason.

Q. And you honestly think that the answers to those questions would tend to incriminate you; is that correct?

A. I refuse to answer for that reason.

Q. Were you admitted on September 27, 1928, to citizenship by the United States District Court of the United States, of the Northern District of Illinois?

A. I refuse to answer for the same reason.

8 Q. Did you receive in pursuance to the action of the Court, the certificate of naturalization No. 2827322?

A. I refuse to answer for the same reason.

Q. When were you born, Mr. DeLucia?

A. I refuse to answer for the same reason.

Q. Do you honestly think that if you answered that question, it would tend to incriminate you?

A. I refuse to answer for the same reason.

Q. Were you indeed not born on November 14, 1897?

A. I refuse to answer for the same reason.

Q. What was your name at the time of birth?

A. I refuse to answer for the same reason.

Q. Was it not Felice DeLucia?

A. I refuse to answer for the same reason.

Q. Do you honestly believe that answering the last two questions there would tend to incriminate you?

A. I refuse to answer for the same reason.

Q. Where were you born, sir?

A. I refuse to answer for the same reason.

Q. What was your father's name?

A. I refuse to answer for the same reason.

Q. What was your mother's name?

A. I refuse to answer for the same reason.

Q. What was your grandfather's name, on your father's side?

A. I refuse to answer for the same reason.

Q. And your grandmother's name on your father's side?

A. I refuse to answer for the same reason.

Q. And you honestly believe that answering those questions would tend to incriminate you; is that correct?

A. I refuse to answer for the same reason.

Q. Did you have any brothers, Mr. DeLucia?

A. I refuse to answer for the same reason.

Q. You had four sisters; isn't that correct?

A. I refuse to answer for the same reason.

Q. Would you state your sisters' names?

A. I refuse to answer for the same reason.

Q. You honestly believe that in answering that question you would tend to incriminate yourself?

A. I refuse to answer for the same reason.

Q. You have a sister named Emilia Beatrice DeLucia; do you not?

A. I refuse to answer for the same reason.

Q. She was born on December 8, 1898?

A. I refuse to answer for the same reason.

Q. Do you have a sister named Anna Clementina, born on March 13, 1901?

A. I refuse to answer for the same reason.

Q. Do you have a sister named Clementina DeLucia, born May 23, 1905?

A. I refuse to answer for the same reason.

Q. Do you have a sister named Luisa DeLucia, born March 4, 1907?

A. I refuse to answer for the same reason.

Q. You honestly believe that answering those last four questions, the answers thereto, would tend to incriminate you?

A. I refuse to answer for the same reason.

Q. Were you convicted at the age of 17, Mr. DeLucia, on May 18, 1917, in the Common Assize Court of Naples, Italy, of the crimes of voluntary homicide on the person of one Emilio Perillo, carrying a gun without a license, and violating the law on Government concessions, said crimes having been committed on July 17, 1915?

A. I refuse to answer for the same reason.

Q. As a result of the conviction that I mentioned previously, sir, were you sentenced to imprisonment to two years, six months, and 16 days, and fined 145 Lire?

A. I refuse to answer for the same reason.

Q. You honestly believe that in answering those questions the answers thereto might incriminate you; is that correct?

A. I refuse to answer for the same reason.

Q. Were you convicted in absentia, sir, on June 30, 1924,

by the Third Special Assize Court of Naples, Italy, for the crime of voluntary Homicide on the person of Vincenzo Capasso?

A. I refuse to answer for the same reason.

Q. Were you convicted on the aforesaid date of carrying a gun without a license and violating the law on Government concessions?

A. I refuse to answer for the same reason.

11 Q. All of these crimes that I have referred to in the last two questions were committed on June 17, 1920?

A. I refuse to answer for the same reason.

Q. And you honestly believe that in answering the latter two questions, that the answers thereto, would tend to incriminate you?

A. I refuse to answer for the same reason.

Q. Now, Mr. DeLucia, as a result of the convictions that I referred to, allegedly committed at an age of 22, and conviction entered on June 30, 1924, in absentia, were you sentenced to 21 years and 10 days imprisonment, and fined 207 Lire?

A. I refuse to answer for the same reason.

Q. You served two years and six months and 16 days as a result of the first conviction that I talked about; that is the voluntary homicide on one Emilio Perillo?

A. I refuse to answer for the same reason.

Q. You were never imprisoned, you were never imprisoned?

A. I refuse to answer for the same reason.

Q. Are you presently married, sir?

A. I refuse to answer for the same reason.

Q. Is your wife's name Nancy Gigante?

A. I refuse to answer for the same reason.

Q. Referring to the second conviction, that I talked about before, that was entered in absentia, have you taken any steps in recent years to set aside that conviction or lift the warrant of arrest that was outstanding?

A. I refuse to answer for the same reason.

12 Q. When were you married, sir, first?

A. I refuse to answer.

Q. By that, I mean the civil ceremony?

A. I refuse to answer for the same reason.

Q. Were you married in a civil ceremony to Nancy Gigante on January 3, 1927, in Chicago, Illinois, by Judge Joseph W. Schulman?

A. I refuse to answer for the same reason.

Q. Were you married in a church ceremony on January 30, 1927, to Nancy Gigante at Holy Guardian Angel Church in Chicago, Illinois?

A. I refuse to answer for the same reason.

Q. And you honestly believe that the answers to the last two questions would tend to incriminate you?

A. I refuse to answer for the same reason.

Q. Did you execute a depositor's card on September 8, 1927, with the First National Bank of Chicago, savings?

A. Did I what?

Q. Did you execute a depositor's card on September 8, 1927, with the First National Bank of Chicago?

A. I refuse to answer for the same reason.

Q. Were you, at that time, residing at 917 Blue Island Avenue, Chicago, Ill.?

A. I refuse to answer for the same reason.

Q. Have you ever resided at 917 Blue Island Avenue?

A. I refuse to answer for the same reason.

Q. You honestly believe that the answers to the last two questions would tend to incriminate you?

A. I refuse to answer for the same reason.

Q. Did you claim at the time of the execution
13 of the depositor's card that you were, at that time, a theater manager?

A. I refuse to answer for the same reason.

Q. Have you ever been a theater manager?

A. I refuse to answer for the same reason.

Q. Did you ever manage the Dante Theater here in Chicago?

A. I refuse to answer for the same reason.

Q. You honestly believe the answers thereto would tend to incriminate you; is that right?

A. I refuse to answer for the same reason.

Q. Did you ever execute an application for beneficial membership in the Italo-American National Union for insurance?

A. I refuse to answer for the same reason.

Q. Did you execute such application in the amount of $1500 on November 25, 1932?

A. I refuse to answer for the same reason.

Q. Did you ever reside at 410 South Austin, Oak Park, Illinois?

A. I refuse to answer for the same reason.

Q. Did you reside at that aforesaid address on November 25, 1932?

A. I refuse to answer for the same reason.

Q. Did you ever apply for any additional insurance in the Italo-American National Union, in particular on January 15, 1934?

A. I refuse to answer for the same reason.

Q. Was that application in the amount of $5,000?

A. I refuse to answer for the same reason.

14 Q. Did you reside at that time at 410 South Austin, Oak Park, Illinois?

A. I refuse to answer for the same reason.

Q. Did you ever submit an application for insurance with the North Western National Life Insurance Company?

A. I refuse to answer for the same reason.

Q. That company is located in Minneapolis, Minnesota. Did you execute such application on November 22, 1935?

A. I refuse to answer for the same reason.

Q. Do you have a $10,000 life insurance policy with that company?

A. I refuse to answer for the same reason.

Q. Mr. DeLucia, when did you first come to Chicago, sir?

A. I refuse to answer for the same reason.

Q. Now, on your petition for naturalization, you said you came to Chicago in 1920; is that correct?

A. I refuse to answer for the same reason.

Q. And you honestly believe the answers to those questions might tend to incriminate you?

A. I refuse to answer for the same reason.

Q. Did you list on your petition of naturalization, at the time of the execution of it, that you lived at 905 South Halsted Street, Chicago, Illinois?

A. I refuse to answer for the same reason.

Q. Did you claim at the time you executed the petition for naturalization that you were a restaurant manager?

A. I refuse to answer for the same reason.

Q. Did you ever state that you were born on July 10, 1898, sir?

A. I refuse to answer for the same reason.

15 Q. Did you ever say you were born at Apricena?

A. I refuse to answer for the same reason.

Q. From what country did you immigrate to the United States?

A. I refuse to answer for the same reason.

Q. That was France, wasn't it?

A. I refuse to answer for the same reason.

Q. And it was about the 1st day of August 1920?

A. I refuse to answer for the same reason.

Q. And you came to the United States in the vessel Ryndam, on or about August 10, 1920?

A. I refuse to answer for the same reason.

Q. And you honestly believe that the—that in answering those questions the answers thereto might tend to incriminate you?

A. I refuse to answer for the same reason.

Q. When did you reside at 4920 West Monroe Street?

A. I refuse to answer for the same reason.

Q. Now, Mr. DeLucia, you registered for the draft on February 16, 1942; is that not correct?

A. I refuse to answer for the same reason.

Q. Did you ever register for the draft?

A. I refuse to answer for the same reason.

Q. Did you ever give your home address as 812 North Lathrop Avenue, River Forest, Illinois?

A. I refuse to answer for the same reason.

16 Q. Do you live now at 1515 Bonnie Brae, River Forest, Illinois?

A. Yes.

Mr. Stewart: Yes, you can give them that.

The Witness: Yes.

Mr. Bickley: I see.

Q. Now, directing your attention to on or about December 22, 1943, were you found guilty of violation of Section 428, Title 18, United States Code?

I am referring now to the trials that were had in the Southern District of New York, and were you sentenced by the District Court for the Southern District of New York, to ten years imprisonment and ten thousand dollars fine?

A. I refuse to answer for the same reason.

Q. Now, of that sentence that I just referred to, did you perform part of that sentence in the Federal penitentiary at Atlanta, Georgia?

A. I refuse to answer for the same reason.

Q. And did you perform the remainder of the sentence at the Federal penitentiary at Leavenworth, Kansas, prior to your parole?

A. I refuse to answer for the same reason.

17 Q. Are you the same man that received the parole?

A. I refuse to answer for the same reason.

Q. Have you ever been in a Federal penitentiary?

A. I refuse to answer for the same reason.

Q. You honestly believe that the answers thereto might tend to incriminate you?

A. I refuse to answer for the same reason.

Q. Have you ever used the alias-name of Paul Ricca?

A. I refuse to answer for the same reason.

Q. Have you ever used the alias name of Paul Viela?

A. I refuse to answer for the same reason.

Q. Were you arrested by the Chicago Police Department on January 23, 1927, on the charge of general principles?

A. On the charge of what?

Q. On the charge of general principles under the name of Paul Viela?

A. I refuse to answer for the same reason.

Q. Now, Mr. DeLucia, did you testify before the Special Committee to investigate organized crime in interstate commerce in the United States Senate, Washington, D. C., on December 9, 1950?

A. I refuse to answer for the same reason.

Q. And did you testify before the Special Committee to investigate organized crime in interstate commerce of the United States Senate at Chicago, Illinois, on October 6, 1950?

A. I refuse to answer for the same reason.

Mr. Bickley: Off the record.

(Discussion off the record.)

Mr. Bickley: Q. Mr. DeLucia, some of the matters that I have asked you here today, you have previously testified about under oath.

Do you wish to change your answers to any of the questions which I have asked you today?

A. I refuse to answer for the same reason.

Q. I take it then that you refuse to answer any and all questions which might be propounded to you; is that correct?

A. I refuse to answer for the same reason.

Q. Did you ever claim, sir, that your mother's name was Terrelli Annunziata Maria?

A. I refuse to answer for the same reason.

Mr. Bickley: Off the record.

(Discussion off the record.)

19 Mr. Bickley: Q. Mr. DeLucia, do you know a man by the name of Raphael Perillo?

A. Who?

Q. Raphael Perillo?

A. I refuse to answer for the same reason.

Q. Now, you have a sister by the name of Emilia, don't you?

A. I refuse to answer for the same reason.

Q. Was your sister Emilia and your father, Antonio, ever indicted for, or brought to trial on a charge of voluntary homicide on the person of Raphael Perillo?

A. I refuse to answer for the same reason.

Q. Were these people that I mentioned, in fact, your father and mother?

A. I refuse to answer for the same reason.

Q. Have you ever claimed that you had a father with the name of Antonio and a sister by the name of Emilia?

A. I refuse to answer for the same reason.

Mr. Bickley: That is all for this deposition.

Further Deponent Saith Not.

20 5. Affiant further states that it was material to the issues and well known to the defendant and the counsel for the defendant that the questions were material to the issues in this cause.

This affidavit is made in support of a motion to compel Paul DeLucia also known as Felice DeLucia, defendant herein, to answer the above set forth questions.

John H. Bickley, Jr.,
Assistant United States Attorney.

Subscribed and sworn to before me this 26th day of February, A.D. 1957.

Angela R. Berg,
(Seal) *Notary Public.*

21 Exhibit B.

United States District Court.
(Caption—56-C-1676)

CERTIFICATE OF OFFICER UPON REFUSAL TO ANSWER ORAL INTERROGATORIES ON DEPOSITION.

I, Popkin Simonian, a notary public, before whom the deposition of Paul DeLucia also known as Felice DeLucia was taken in the above entitled cause on behalf of the plaintiff, certify that Paul DeLucia also known as Felice DeLucia was duly sworn by me and was examined by John H. Bickley, Jr., attorney for the plaintiff, and that in the course of said examination said attorney for the plaintiff asked the witness the questions attached hereto. The defendant, Paul DeLucia also known as Felice DeLucia refused to answer the aforesaid questions on the grounds that to do so would deprive him of his rights under the Fifth Amendment to the Constitution of the United States and would tend to incriminate him.

Popkin Simonian,
Notary Public.

Dated at Chicago, Illinois, this 26th day of February, A.D. 1957.

41 UNITED STATES DISTRICT COURT.
(Caption—56-C-1676)

MOTION.

(Filed Apr. 8, 1957. Roy H. Johnson, Clerk.)

Now comes the plaintiff, United States of America, by its attorney, R. Tieken, United States Attorney for the Northern District of Illinois and moves this Honorable Court to enter a rule on the defendant, Paul De Lucia also known as Felice De Lucia, to show cause why he should not be held in contempt of this court.

It is further moved that the rule be made returnable on the morning of April 10, 1957, at 10:00 A. M., or as soon thereafter as counsel may be heard.

R. Tieken,
United States Attorney.

JHBjr:ge

42 State of Illinois, } ss.
County of Cook. }

(Caption—56-C-1676)

AFFIDAVIT.

(Filed Apr. 8, 1957. Roy H. Johnson, Clerk.)

John H. Bickley, Jr., Assistant United States Attorney for the Northern District of Illinois, Eastern Division, being first duly sworn, on oath deposes and states as follows:

1. That on March 27, 1957, this Honorable Court filed a memorandum in the above entitled case which contained therein an order on the defendant, Paul De Lucia also known as Felice De Lucia, to answer oral interrogatories

posed at the taking of his deposition on February 20, 1957, within three days from the date thereof.

2. That in order for the defendant to comply with the court's order, the defendant would of necessity have to appear either before the official court reporter and answer the questions propounded or file with the Clerk of this Honorable Court answers to the questions posed at the deposition on or before 5:30 P. M., April 1, 1957.

43 3. That on March 28, 1957, I called the office of counsel for the defense, Mr. William Scott Stewart, and asked Mr. Stewart when he intended to bring the defendant in and answer the questions and thus comply with the court order. Mr. Stewart advised that he was not sure from reading the court order that he had to produce the defendant to answer the questions or whether he could merely file answers thereto with the Clerk of this Honorable Court, but in any event stated: "I have told the Judge what our position is in the matter. We do not intend to answer these questions—I am not going to bring the defendant in, nor file any answers thereto and it appears that the next move is up to you."

4. That up to and including the present date, the defendant has failed to answer the questions propounded at the deposition, has failed to file with the Clerk of this Honorable Court answers to the questions posed at the deposition and has wilfully refused to comply with the order of this court entered March 27, 1957, in any manner.

John H. Bickley, Jr.,
Assistant United States Attorney.

Subscribed and sworn to before me this 8th day of April, A. D. 1957.

Angela R. Berg,
Notary Public.

(Seal)

44 IN THE UNITED STATES DISTRICT COURT.
(Caption—56-C-1676)

Monday, April 8, 1957.

Present: Honorable Walter J. LaBuy, District Judge.

This day come the parties by their counsel and plaintiff by its counsel enters its motion for rule to show cause and by agreement of the parties by their counsel it is

Ordered that ruling be and the same hereby is deferred until after the trial of this cause.

45 IN THE UNITED STATES DISTRICT COURT.
(Caption—56-C-1676)

Monday April 8, 1957.

Present: Honorable Walter J. LaBuy, District Judge.

This cause this day being called for trial come the parties by their counsel and the defendant by his counsel enters his motion for reconsideration of Court's ruling with respect to order requiring defendant to answer oral interrogatories and the court being fully advised it is

Ordered that said motion be and the same hereby is denied and the plaintiff by its counsel enters its motion for order under Rule 37(b)(2)(i), Federal Rules of Civil Procedure and the Court being fully advised it is

Further Ordered that said motion of plaintiff be and the same hereby is denied and on motion of plaintiff by counsel it is

Further Ordered that all witness subpoenas served herein be and the same hereby are continued from day to day during the pendency of this trial and the issues being joined herein the trial proceeds and during the hearing of

plaintiff's evidence the hour of adjournment having arrived it is

Further Ordered that the trial of this cause be and the same hereby is adjourned to April 9, 1957.

451 UNITED STATES DISTRICT COURT.

(Caption—56-C-1676)

Friday, June 7, 1957.

Present: Honorable Walter J. LaBuy, District Judge.

Upon due consideration the Court being fully advised having this day filed its Memorandum Opinion it is

Ordered that said Memorandum of the Court shall constitute findings of fact and conclusions of law and it is

Further Ordered that leave be and hereby is granted to plaintiff to present appropriate judgment order within ten (10) days and that plaintiff's motion for rule to show cause why defendant should not be punished for contempt of Court be and the same hereby is allowed and that leave be and hereby is granted to defendant to file answer within 10 days.

46 IN THE UNITED STATES DISTRICT COURT.
(Caption—56-C-1676)

ANSWER OF DEFENDANT.

And Brief for Defendant In Opposition to Government Motion to Punish Defendant for Refusal to Answer Questions.

(Filed June 11, 1957. Roy H. Johnson, Clerk.)

47 Answer of Defendant.

Now comes Paul DeLucia defendant in the above entitled cause and makes answer in the matter of the motion of the Government to have the Court punish this defendant for refusal to answer certain questions.

First, as is shown by the transcript, this defendant objected to being sworn as a witness on the ground that until this defendant elected to take the stand the Government had no right to call this defendant as a witness. Now
48 this defendant answering requests Your Honor to hold as a matter of law that the plaintiff had no right to call defendant as a witness over objection.

Second, in refusing to answer the questions put to this defendant orally by the United States Attorney, as is shown by the transcript, this defendant, acting upon the advice of counsel, claimed the privilege guaranteed by the Fifth Amendment. This defendant has refused to answer although ordered to do so for the same reason and with all due respect. This defendant answering further states that he had no intention to belittle, degrade, obstruct, interrupt, prevent or embarrass the Court in the administration of justice. That the situation was really created by the United States Attorney; having been informed that this defendant intended to claim privilege, in persisting in asking over

one hundred questions. This defendant answering further respectfully represents that it was necessary for him to claim the protection of the Constitution and that he was well within his rights and therefore not in contempt of this Honorable Court. Counsel has furnished herewith some of the reasons for the advice given and this defendant respectfully supports this answer with the brief and argument of his attorney. On the basis of the surrounding circumstances and background here shown to the Court as well as the facts within his own personal knowledge, this defendant avers that he had a real fear that the answers to the questions asked would incriminate him of a federal offense.

Paul DeLucia,

Defendant.

State of Illinois
Cook County

Paul DeLucia being first sworn states that the above answer is true.

Paul DeLucia.

Subscribed and sworn to before me this June 10, 1957.

Mildred R. Lesnig,

(Seal) *Notary Public.*

49 Statement.

The Government submitted three motions. Two of them require no further attention at this time.*

As to the third motions, Your Honor ordered DeLucia to answer the oral interrogatories posed at his deposition within three days. The defendant is unable to answer the questions for fear of waiving the privilege against self incrimination. It is respectfully submitted that Your

* For the convenience of the Court and the parties we have printed and appended the Memorandum decision and its supplement.

Honor should determine as a matter of law that in refusing to answer, DeLucia was within his rights and therefore should not be punished for contempt. As the law required Your Honor to pay some heed to the situation DeLucia finds himself to be in, including background and surrounding circumstances we submit herewith a printed copy of an indictment recently returned against DeLucia in No. 57 C.R. 154, accompanied by various motions supported by the affidavit of a co-defendant. This affidavit incorporates certain printed transcripts of Congressional hearings submitted herewith. All of this material is filed herewith with the respectful suggestion that it may be helpful in understanding the scope of the inquiry made by Mr. Bickley in the deposition hearing. The questions asked by Mr. Bickley were printed on behalf of the defendant as an appendix to the Brief for Defendant heretofore filed in opposition to the Government Motion to Strike our Answer.

50 Brief.

I.

The Fifth Amendment declares in part that "No person * * * shall be compelled in any criminal case to be a witness against himself." This guarantee against testimonial compulsion, like other provisions of the Bill of Rights "was added to the original Constitution in the conviction that too high a price may be paid even for the unhampered enforcement of the criminal law, and that in its attainment other social objects of a free society should not be sacrificed." *Feldman* v. *United States*, 322 U.S. 487, 489. This provision of the Amendment must be accorded liberal construction in favor of the right it was intended to secure. *Counselman* v. *Hitchcock*, 142 U.S. 547, 562; *Arndstein* v. *McCarthy*, 254 U.S. 71, 72-73.

The privilege afforded not only extends to answers that would in themselves support a conviction under a federal criminal statute but likewise embraces those which would furnish a link in the chain of evidence needed to prosecute the claimant for a federal crime." *Blau* v. *United States*, 340 U.S. 159. * * * However, if the witness, upon interposing his claim, were required to prove the hazard in the sense in which a claim is usually required to establish a claim in court, he would be compelled to surrender the very protection which the privilege is designed to guarantee. To sustain the privilege, it need only be evident from the implications of the question, in the setting in which it is asked that a responsive answer to the question or an explanation of why it cannot be answered might be dangerous because injurious disclosure could result. The trial judge in appraising the claim "must be governed as much by his personal perception of the peculiarities of the case as by the facts actually in evidence." See Taft, J., in *Ex parte Irvine*, 74 F. 954, 960. * * * The ends of justice re-
51 quire discharge of one having such right whenever facts appear sufficient to sustain the claim of privilege.

Hoffman v. *United States*, 341 U.S. 479, 485.

II.

The privilege may be claimed in a civil case.

McCarthy v. *Arndstein*, 262 U.S. 355.

See Supplemental memo by Judge LaBuy here in appendix.

III.

Where a witness is asked a series of questions some of which properly relate to the charge while others do not and the witness claims his constitutional privilege and refuses to answer any of the questions he cannot be adjudged

guilty of contempt under a rule to show cause why he should not answer all of the questions.

People v. *Boyle*, 312 Ill. 586.
People v. *Newmark*, 312 Ill. 625.

IV.

A sufficient initiary accusation or affidavit in proceedings to punish contempts committed out of the presence of the court is generally held to be jurisdictional.

17 C.J.S. § 72, p. 88.
See Rule 42 Federal Rules of Criminal Procedure.
Carlson v. *United States*, 209 F. (2d) 209.
Wong Gin Ying v. *United States*, 231 F. (2d) 776.
Silva v. *United States*, 227 F. (2d) 74.
Matusow v. *United States*, 229 F. (2d) 335.

52 Argument.

May It Please the Court:

A defendant should be allowed to choose as to whether he will testify or not.

The legal question presented by the objection made by the defendant to becoming a witness at all was argued in a previous brief submitted by the defense in this case.

The *Costello Case*.

We quote from the Memorandum prepared by Your Honor:

> "The Court has considered the questions submitted to the defendant, and without going into extensive discussion concerning the nature of a suit for denaturalization, is of the opinion the defendant should be required to answer same. See *United States* v. *Costello*, (D.C.N.Y., 1954) 16 F.R.D. 428, Aff'd (C.A., 2, 1955) 222 F. (2d) 656, cert. den., 350 U.S. 847; *United States* v. *Lustig* (D.C.N.Y., 1954), 16 F.R.D. 137."

Upon reconsideration we trust that Your Honor will decide that the *Costello* case is not in point here. In the case at bar, DeLucia was asked 109 questions. Costello was not in such a bad situation as that confronting DeLucia, or if he was his lawyers failed to acquaint the Trial Judge with the danger involved in any answers to the questions put to Costello. In the case at bar, we had pointed out to Your Honor reasons for concluding that DeLucia is in real danger and we incorporate additional reasons here in this brief.

Judge Swan said about Costello, p. 662:

> "* * * but he still was under the necessity of showing some reasonable basis for his fear of self incrimination by answering the questions propounded. Judge Clancy rightly held there was no such basis."

53 Your Honor will note that Judge Swan held that any conspiracy to obtain citizenship had terminated and that, p. 662:

> "* * * the possibility of Costello's participation in any other criminal conspiracy which had continued for such a long span of time that it was not yet barred, was too remote to support a bona fide need for the assertion of the privilege."

We expect to point out here some of our reasons for requesting Your Honor to hold that the danger to DeLucia was clear and present, not remote.*

First we ask Your Honor to examine the indictment in No. 57 CR-154 to see how the Government seeks to avoid the statute of limitations. Although the statute has run against taxes for 1948 and 1949 the indictment makes use of a recent date upon which it is alleged that DeLucia made false statements. The conspiracy count shows on its face that the statute had run except for the allegation that the

* Upon reconsideration we trust that Your Honor will see that the *Lustig* and *Jerome* cases are not in point. There the defendants were premature with their claim of self incrimination.

conspiracy was a continuing one. If Costello had pointed out the possibility of such tactics to the trial judge in his case, the result may have been different. In the case at bar, DeLucia has every reason to believe that the statute of limitations would not prevent a number of indictments.

Suppose we consider just one series of questions put by Mr. Bickley. Questions were asked (Nos. 89, 90, 91, 92, 93, 99, 100 and 101)* intended to establish the DeLucia was convicted in New York, paroled and then questioned before various Congressional Committees.†

54 Then Your Honor will find these questions put by Mr. Bickley which we have numbered:

"100. Q. And did you testify before the Special Committee to investigate organized crime in interstate commerce of the United States Senate at Chicago, Illinois, on October 6, 1950?

101. Q. Mr. DeLucia, some of the matters that I have asked you here today, you have previously testified about under oath.

Do you wish to change your answers to any of the questions which I have asked you today?"

The statute of limitations has run if DeLucia is to be charged with perjury before these Committees. Also the statute gives him immunity, his testimony is not to be used in other cases. But if DeLucia had not refused to answer he would have opened the door to another prosecution. If he had said that his former testimony is true that could have been used as a basis for another charge that he made a false representation on the day of the deposition. If he had said that his Congressional testimony was false that could be used in No. 57 CR 154 as an admission that the continuous conspiracy was in operation back in 1950 as charged.

† The background and history can better be understood after Your Honor considers the affidavit of Attorney Joseph Bulger submitted herewith. Your Honor is authorized to take judicial notice of much of this background material, records, Congressional hearing reports, etc. as they were introduced before Judge Igoe in the parole warrant cases.

We respectfully invite Your Honor to consider another series of questions:

> "54. Q. Did you execute a depositor's card on September 8, 1927, with the First National Bank of Chicago?
>
> 55. Q. Were you, at that time, residing at 917 Blue Island Avenue, Chicago, Illinois?
>
> 56. Q. Have you ever resided at 917 Blue Island Avenue? • • •
>
> 58. Q. Did you claim at the time of the execution of the depositor's card that you were, at that time, a theater manager?
>
> 59. Q. Have you ever been a theater manager?
>
> 60. Q. Did you ever manage the Dante Theater here in Chicago?"

If these questions stood alone and Your Honor did not know anything of DeLucia's background they would seem harmless enough. Your Honor might wonder what they had to do with the naturalization suit, but Your Honor could not be blamed if an order were entered to require DeLucia to answer such innocent looking questions. But are they innocent? Your Honor will know better than to regard them as harmless when background is considered. It will be seen from the record made in *United States* v. *Campagna*, 146 F. 2d, 524 that DeLucia was charged with a continuous conspiracy having for its object, extortion from theater owners and operators. A charge made in a separate indictment that DeLucia and others conspired continuously to take money from the union involved with theaters was pending and dismissed. The likelihood that such charges will be made again is not remote at all. Proof of the management of the Dante Theater may be a missing link. The Government may have sufficient facts to indict, all but this one fact. If the Government is in possession of other evidence that DeLucia managed the theater and lived at 917 Blue Island Avenue, why ask DeLucia? The

fact does not appear to be material to the case at bar, so it must be material to some other charge. At least DeLucia has a right to such a fear.

Next we ask Your Honor to consider the following:

> "62. Q. Did you ever execute an application for beneficial membership in the Italo-American National Union for insurance?"

That question standing alone appears harmless but if Your Honor will look at the reports of the Congressional Committees it will be seen from the questions asked, that
56 instead of being an insurance company this in fact was said to be part of the Mafia, a blackhand society alleged to have been operated by DeLucia and his Italian friends.

After Mr. Bickley asked about criminal trials said by him to have occurred in Italy we find the following:

> "47. Q. Referring to the second conviction, that I talked about before, that was entered in absentia, have you taken any steps in recent years to set aside that conviction or lift the warrant of arrest that was outstanding?"

If DeLucia answered and said he had done something here, chances are that that could be made a basis for some sort of conspiracy to corrupt the United States officials or to make false representations to them. In this connection please consider the following:

> "107. Q. Was your sister Emilia and your father, Antonio, ever indicted for, or brought to trial on a charge of voluntary homicide on the person of Raphael Perillo?"

This question on its face indicates that DeLucia was being questioned about other crimes committed by others. Surely DeLucia had a right to fear that an effort was being made to connect him with some criminal activity here concerning such crimes. Next please consider the following:

"85. Q. Now, Mr. DeLucia, you registered for the draft on February 16, 1942; is that not correct?

86. Q. Did you register for the draft?"

It is common knowledge that many federal crimes arise out of registration for the draft. It would be difficult for DeLucia to comprehend what registration had to do with the effort of the Government to take away his citizenship. Naturally he would fear further prosecution based upon draft laws. DeLucia also would wonder why the prose-
57 cutor wished to know if he had lived at this address and that address if the prosecutor was not seeking evidence concerning the commission of some other crime.

In the absence of the background material furnished the Court, Your Honor might have concluded that DeLucia could have answered some of the questions about his naturalization. But Your Honor is requested to keep in mind the danger of having the Government officials claim that any answer would constitute a waiver. There exists still another danger because of the nature of this case. Your Honor knows that in this proceeding the Government has attempted to charge DeLucia with fraud in the procurement of his citizenship. It can not be said here that that fraud if committed was committed so long ago that DeLucia need have no fear because it happened so long ago. From the newspaper articles and the questions asked DeLucia and various witnesses, the Government is seeking evidence upon which to charge DeLucia with a large number of crimes including the importation of narcotics, smuggling, violation of liquor laws, offenses against the currency and interstate commerce. It would be a simple matter for the Government to allege that his claimed illegal entry was part of a continuing conspiracy to come to this country for the purpose of violating our laws. That part of the plan of the conspirators was not only to obtain citizenship papers but to continue to conceal the alleged fraud, in

order for DeLucia to maintain that status and not be subject to deportation. As Your Honor knows, if the Government is able to cancel citizenship in the case at bar, the law will regard DeLucia as an alien, as if he never had citizenship. The Attorney General has announced his intention to deport DeLucia if possible. DeLucia has one felony conviction and is under indictment for another. It is obvious that the prosecution is seeking to have DeLucia incriminate himself in order to pave the way for future prosecutions.

58 Upon reconsideration, we trust that Your Honor will perceive that DeLucia faced a real danger and could not have answered the questions without furnishing evidence against himself for use in contemplated criminal prosecutions.

Since the preparation of this answer and brief, we have been informed that the Government seeks some order under Rule 37. Rule 37 provides for certain remedies where the refusal was without substantial justification. We respectfully submit this answer brief and material in support of our contention that defendant was justified in his refusal to answer.

Upon oral argument Wednesday, April 3, 1957, as we understood it, Mr. Bickley asked Your Honor to reconsider the rulings heretofore made concerning the requests for admissions. Mr. Bickley cited *Ackerman* v. *United States*, 340 U. S. 193 and *United States* v. *Eichenlaub*, 180 F. (2d) 314 in support of his argument that *Klapport* v. *United States*, 335, 601 cited by Your Honor has been modified. We do not find any modification of the rule of law announced by Your Honor. Mr. Bickley has stated that he does not seek a default judgment and we are not in Court seeking relief under Rule 60(b). So with all due respect we are unable to find anything of value here in *Ackerman* or *Eichenlaub*.

Your Honor will remember that at the same oral argument we requested reconsideration of the order to answer in three days. We cited *People* v. *Newmark*, 312 Ill. 625, and *People* v. *Boyle*, 312 Ill. 586 (which cited federal cases) from which it will be seen that the present order of court to answer all of the questions cannot support any contempt judgment if Your Honor is now able to perceive that DeLucia was within his rights in refusing as to some questions asked.

59 We respectfully submit that the papers filed by the Government will not support any rule to show cause as a matter of procedure. We have appended hereto a copy of the notice and petition filed by the Government. Your Honor will observe that there is no affidavit, the petition is not sworn to and Your Honor will not be able to find a charge of contempt. The petition states that it is within the power of this court to do certain things and then prays for relief under Rule 37(b)(2)(i) of the Federal Rules of Civil Procedure.

We trust that upon study of the matter Your Honor will hold that DeLucia was within his rights and therefore not in contempt.

Respectfully submitted,
Wm. Scott Stewart,
Attorney for Defendant.

60 Appendix.

Memorandum.

The government has submitted three motions for determination in the above cause.

The first is a motion to strike the answer of the defendant and to order defendant to answer those portions of the complaint he knows to be true and which in his answer he admits are correctly stated. Defendant has filed a general

denial and appended to said answer a Note of Explanation wherein he expressly admits some of the matters are correctly stated in the complaint, but that no answer can or should be made since to do so would waive his later assertion of the privilege of the Fifth Amendment. It is axiomatic that waiver of the privilege of the Fifth Amendment at any stage of the proceedings in which it might have been claimed precludes its subsequent assertion and such a waiver may occur by the filing of an answer. Although the answer is not in the approved form of the Federal Rules of Civil Procedure, the court is of the opinion the government's motion to strike the same should be overruled.

The second motion is to compel the defendant to answer oral interrogatories posed at his deposition and which he refused to answer on the ground that he did not want to be a witness against himself and declared the privilege of the Fifth Amendment. The court has considered the questions submitted to the defendant, and without going into extensive discussion concerning the nature of a suit for denaturalization, is of the opinion the defendant should be required to answer same. See *United States* v. *Costello*, (D.C. N.Y., 1954) 16 F.R.D. 428, aff'd (C.A. 2, 1955) 222 F. (2d) 656, cert. den., 350 U.S. 847; *United States* v. *Lustig*, (D.C.N.Y., 1954) 16 F.R.D. 138; *United States* v. *Jerome*, (D.C.N.Y., 1954) 16 F.R.D. 137.

61 The third motion requests that if the court deem it necessary that an order be entered compelling defendant to answer certain requests for admissions served upon the defendant by the government. The defendant has failed to answer these within the time provided by Rule 36. These requests for the most part seek the same information as the oral interrogatories. No provision can be found either in Rule 36 or in the other procedural rules which would authorize this court to compel a defendant to answer a

request for admissions. *United States* v. *Schine Chain Theatres*, (D.C.N.Y. 1944.) 4 F.R.D. 109, Ill.; *Momand* v. *Paramount Pictures Distributing Co.*, (D.C. Mass., 1941) 36 F. Supp. 568, 573.

An order has this day been entered overruling the government's motion to strike the defendant's answer and its motion to compel answer to the requests for admissions. It is further ordered that the defendant answer the oral interrogatories posed at his deposition within three days from date hereof.

S/ Walter J. LaBuy
Judge, United States District Court

March 27, 1957

62 Supplemental Memorandum.

The court deems it advisable to supplement its previous memorandum which failed to indicate the court's opinion with reference to the default of the defendant to answer the government's Request for Admissions.

Rule 36 of the Federal Rules of Civil Procedure provides that

> "* * * Each of the matters of which an admission is requested shall be deemed admitted . . ."

unless the party upon whom the requests are served (1) files a denial, (2) sets forth why he cannot truthfully admit or deny, or (3) makes a written objection to the requests. Having failed seasonably to answer or object, the defendant in this suit, according to the government, must be held to have admitted the matters requested.

It is apparent that the government considers this case to be an ordinary civil suit. However, the court must recognize the admonition of the Supreme Court of the United States, often repeated, that denaturalization suits

are not ordinary civil law suits. In *Klapprott* v. *United States*, (1949) 335 U. S. 601, 611-612, the Court declared:

"Denaturalization consequences may be more grave than consequences that flow from conviction for crimes. Persons charged with crime in United States courts cannot be convicted on default judgments unsupported by proof. Even decrees for divorce or default judgments for money damages where there is any uncertainty as to the amount must ordinarily be supported by *actual proof*. The reasons for requirement of proof in cases involving money apply with much greater force to cases which involve forfeiture of citizenship and subsequent deportation. This Court has long recognized the plain fact that to deprive a person of his American citizenship is an extraordinarily severe
63 penalty. The consequences of such a deprivation may even rest heavily upon his children. * * * As a result of the denaturalization here, petitioner has been ordered deported. 'To deport one who so claims to be a citizen, obviously deprives him of liberty . . . It may result also in loss of both property and life; or of all that makes life worth living.' NgFung Ho v. White, 259 U. S. 276, 284. Because denaturalization proceedings have not fallen within the technical classification of crimes is hardly a satisfactory reason for allowing denaturalization without proof, while requiring proof to support a mere money fine or a short imprisonment.

"Furthermore, because of the grave consequences incident to denaturalization proceedings we have held that a burden rests on the Government to prove its charges in such cases by clear, unequivocal and convincing evidence which does not leave the issue in doubt. Schneiderman v. United States, 320 U. S. 118, 158. *This burden is substantially identical with that required in criminal cases—proof beyond a reasonable doubt.* * * * Assuming that no additional procedural safeguards are required, it is our opinion that courts should not in §738 proceedings deprive a person of his citizenship until the Government first offers proof of its charges sufficient to satisfy the burden imposed on it, even in cases where the defendant has made default in appearance."

And, Justice Rutledge, in his concurring opinion, stated, at page 616:

> "To treat a denaturalization proceeding, *whether procedurally or otherwise*, as if it were nothing more than a suit for damages for breach of contract or one to recover overtime pay ignores, in my view, every consideration of justice and of reality concerning the substance of the suit and what is at stake.
>
> * * *
>
> ". . . the Schneiderman decision and Baumgartner v. United States, 322 U. S. 665, required *a burden of*
> 64 *proof for denaturalization* which in effect *approximate the burden demanded for conviction in criminal cases, namely, proof beyond a reasonable doubt of the charges alleged as cause for denaturalization. This was in itself and to that extent recognition that ordinary civil procedures such as apply in suits upon contracts and to enforce other purely civil liabilities, do not suffice for denaturalization and all its consequences.* * * *"

These emphatic declarations of the Supreme Court of the United States, impel this court to the conclusion that any default, including technical and procedural defaults which in ordinary civil cases result in evidentiary admissions, cannot be utilized to mitigate, lessen or relieve the government of the positive and affirmative burden imposed by the Supreme Court to prove its case "beyond a reasonable doubt."

S/ Walter J. LaBuy
Judge, United States District Court

March 29, 1957

65 UNITED STATES DISTRICT COURT.
(Caption—56-C-1676)

Notice.

To: William Scott Stewart, Esquire
Attorney At Law
77 W. Washington Street
Chicago 2, Illinois

Please take notice that on Wednesday, April 3, 1957, at the opening of court or as soon thereafter as counsel may be heard, I shall appear before his Honor, Judge Walter J. LaBuy, in the courtroom usually occupied by him the United States Court House, 219 South Clark Street, Chicago 4, Illinois, or before such other Judge who may be sitting in his place and stead, and then and there present a Petition, a copy of which is attached hereto, at which time and place you may appear if you so see fit.

R. Tieken,
United States Attorney

Received a copy of the above and foregoing Notice together with copy of Petition this 2 day of April, A. D. 1957.

William Scott Stewart,
Attorney for Defendant

66 UNITED STATES DISTRICT COURT.
* * (Caption—56-C-1676) * *

Petition.

Your Petitioner, United States of America, by R. Tieken, United States Attorney for the Northern District of Illinois, respectfully represents unto the court as follows:

1. That on March 27, 1957, this Honorable Court filed a Memorandum in the above entitled case which contained therein an order on the defendant, Paul DeLucia also known as Felice De Lucia, to answer oral interrogatories posed at the taking of his deposition on February 20, 1957, within three days from the date thereof.

2. That in order for the defendant to comply with the court's order, the defendant would of necessity have to appear either before an official court reporter and answer the questions or file with the Clerk of this Honorable Court answers to the questions posed at the deposition on or before 5:30 P.M., April 1, 1957.

3. That on March 28, 1957, Assistant United States Attorney John H. Bickley, Jr., called the office of counsel for the defense, Mr. William Scott Stewart, and asked Mr. Stewart when he intended to bring the defendant in and answer the questions and thus comply with the court order. Mr. Stewart advised him that he was not sure from reading the court order as to whether or not he had to produce the defendant to answer the questions, or whether he could merely file answers thereto with the Clerk of this Honorable Court, but in any event stated: "I have told the
67 Judge what our position is in this matter, we do not intend to answer these questions, I am not going to bring the defendant in, nor file any answers thereto, and it appears that the next move is up to you".

4. That up to and including the present date, the defend-

ant has failed to answer the questions posed at the deposition, has failed to file with the Clerk of this Honorable Court answers to the questions posed at the deposition and has wilfully refused to comply with the order of this court entered March 27, 1957 in any manner.

5. That it is within the power of this court, in addition to holding this defendant in both criminal and civil contempt because of his wilful refusal to comply with the court's order, to enter an order pursuant to the provisions of Rule 37 (b) (2) (i), to the effect that the matters regarding which the questions were asked and the facts sought thereby shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order.

6. That because of the wilful refusal of the defendant, the United States of America is entitled to the entry of such an order and wishes to inform this Honorable Court that it will be ready for trial on April 8, 1957.

Wherefore, the Petitioner, United States of America, by R. Tieken, United States Attorney for the Northern District of Illinois, prays this Honorable Court to enter an order pursuant to the provisions of Rule 37 (b) (2) (i) of the Federal Rules of Civil Procedure, ordering that the matters regarding which the questions were asked of this defendant on his deposition or other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the Petitioner now seeking the order.

Respectfully submitted,

R. Tieken,

United States Attorney.

68 UNITED STATES DISTRICT COURT.
(Caption—56-C-1676)

CONTEMPT ORDER.

This cause coming on this date to be heard upon the verified answer of the defendant, Paul De Lucia, filed this date with the Clerk of this Court, to the Rule to Show Cause, allowed on June 7, 1957, by the court in its Memorandum Opinion and it appearing to the Court that since the order was made herein on March 27, 1957, the defendant Paul De Lucia, has wilfully failed to comply with this Court's order in any manner, and the Court having heard arguments of the respective counsel, and having considered the briefs and documents filed of record and the Court being fully advised in the premises,

It Is Hereby Ordered and Decreed that the defendant, Paul De Lucia, be and is hereby adjudged guilty of contempt of this court in violating the order made on the 27th day of March, 1957, in the case of *United States of America v. Paul De Lucia*, No. 56 C 1676, pending in this court.

It Is Further Ordered that the defendant Paul De Lucia, be assessed and fined the sum of Five-Hundred Dol-
69 lars ($500.00) for having violated the order heretofore issued in the case hereinabove referred to and that the same be paid into the registry of this court.

It Is Further Ordered that payment of this fine is hereby stayed pending appeal or until such time as a final order be entered, under usual appellate procedure, with reference to the above.

Enter:

Walter J. La Buy,
Judge.

Dated at Chicago, Illinois, this 11th day of June, A.D. 1957.

JHBjr:ge

70 UNITED STATES DISTRICT COURT

Northern District of Illinois,

Eastern Division.

United States of America, *Plaintiff,* vs. Paul De Lucia, *Defendant.*	Honorable Walter J. LaBuy, District Judge.

NOTICE OF APPEAL.

(Filed Jun. 11, 1957. Roy H. Johnson, Clerk.)

Notice is hereby given that Paul DeLucia the defendant above named, hereby appeals to the United States Court of Appeals for the Seventh Circuit from the judgment entered in this action on June 11, 1957.

Respectfully submitted,

Wm. Scott Stewart,
Attorney for Appellant
Paul DeLucia.

71 United States of America,
Northern District of Illinois, } ss:

(Caption—56-C-1676)

CERTIFICATE OF MAILING.

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby certify that on the 11th day of June, 1957, in accordance with Rule 73(b) of the Federal Rules of Civil Procedure, a copy of the foregoing Notice of Appeal was mailed to:

Honorable R. Tieken, United States Attorney,
450 United States Court House,
Chicago 4, Illinois.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 11th day of June, 1957.

Roy H. Johnson,
Clerk.

(Seal)

By Gizella Butcher,
Deputy Clerk.

72 IN THE UNITED STATES DISTRICT COURT.
(Caption—56-C-1676)

STIPULATION.

(Filed Jun. 19, 1957. Roy H. Johnson, Clerk.)

It is hereby stipulated by and between the attorneys for the plaintiff and the attorney for the defendant, pursuant to Rule 12 (e) of the United States Court of Appeals, for the Seventh Circuit, that the Clerk of this District shall include among the original papers to be transmitted to said Court of Appeals the items below listed and shall omit others:

1. The oral *motion for rule* to show cause made February 28, 1957. Together with notice, affidavit and motion. Requests for admissions.
2. The answer and brief in opposition filed same day.
3. Motion for rule to show cause filed April 8, 1957.
4. Rule to show cause entered April 8, 1957.
5. Order allowing rule to show cause.
6. Sworn answer of Defendant filed June 11, 1957.
7. Judgment or order finding defendant guilty of contempt.
8. All briefs filed relative to contempt action.

R. Tieken,
United States Attorney.
JMB

Wm. Scott Stewart,
Attorney for Defendant.

73 IN THE UNITED STATES DISTRICT COURT.
(Caption—56-C-1676)

ORDER EXTENDING TIME FOR RECORD.

For good cause shown, the time for filing the record on appeal in the above entitled cause is hereby extended to and including August 12, 1957.

Enter

Campbell,
Judge.

A True Copy Teste

Roy H. Johnson,
(Seal) *Clerk,*
By Gizella Butcher,
Deputy Clerk.

July 26, 1957.

74 United States of America, }
Northern District of Illinois, } ss:

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby certify that the annexed and foregoing are the original papers constituting the record on appeal in the contempt proceedings in the cause entitled: United States of America, Plaintiff, *vs.* Paul DeLucia, also known as Felice De Lucia, Defendant, No. 56 C 1676, as follows:

Notice, Motion to compel party to answer oral interrogatories on deposition and affidavit in support of motion filed February 28, 1957.

Motion of plaintiff filed April 8, 1957 and Affidavit of John H. Bickley, Jr., Assistant United States Attorney.

Order entered April 8, 1957 ruling on plaintiff's motion

for rule to show cause deferred until the trial of this cause.

Order entered April 8, 1957 denying defendant's motion for reconsideration of Court's ruling with respect to order requiring defendant to answer oral interrogatories; denying motion of plaintiff for order under Rule 37(b) (2) (i), FRCP.*

Answer of Defendant filed June 11, 1957.

Contempt order entered June 11, 1957.

Defendant's Notice of Appeal filed June 11, 1957.

75 Stipulation re the contents of record on appeal filed June 19, 1957.

Order entered July 19, 1957 extending time for filing record on appeal to and including August 12, 1957 (certified copy of original incorporated in transcript of record on appeal in complete record).

filed and entered among the records of the said Court in my office, on the dates indicated.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 26th day of July, 1957.

Roy. H. Johnson,

(Seal) *Clerk.*

By Gizella Butcher,

Deputy Clerk.

* Order entered June 7, 1957 plaintiff's motion for rule to show cause allowed and defendant to answer within ten days.